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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LESLIE CATHERINE SHEEHAN,)
Plaintiff,)
v.)
CITY AND COUNTY OF)
SAN FRANCISCO, et al.,)
Defendants.)

NO. C-96-3931 JCS

**FINAL JURY INSTRUCTIONS:
PHASE ONE**

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JURY INSTRUCTION NO. 2

INSTRUCTIONS TO BE CONSIDERED AS A WHOLE

If any matter is repeated or stated in different ways in my instructions, no emphasis is intended.

Do not draw any inference because of a repetition.

Do not single out any individual rule or instruction and ignore the others. Consider all the instructions as a whole and each in the light of the others.

The order in which the instructions are given has no significance as to their relative importance.

JURY INSTRUCTION NO. 3

USE OF NOTES

You may use notes taken during trial to assist your memory. Notes, however, should not be substituted for your memory, and you should not be overly influenced by the notes.

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JURY INSTRUCTION NO. 5

STIPULATIONS

In this case, the parties have stipulated to the following facts:

1. Mrs. Sheehan, is the spouse of Edwin Sheehan;
2. Mrs. Sheehan is Edwin Sheehan's successor in interest.
3. Sargent Haggett was acting under of color of law when he shot and killed Edwin Sheehan;

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JURY INSTRUCTION NO. 9

OPINION EVIDENCE (EXPERT WITNESSES)

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

JURY INSTRUCTION NO. 10

HYPOTHETICAL QUESTIONS

An expert witness was asked to assume that certain facts were true and to give an opinion based upon that assumption. This is a hypothetical question. If any fact assumed in such a question has not been established by the evidence, you should determine the effect of that omission upon the value of an opinion based on that fact.

1 **JURY INSTRUCTION NO. 11**

2 **CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE**

3 Certain charts and summaries that have not been received in evidence have been shown to you
4 in order to help explain the contents of books, records, documents, or other evidence in the case. They
5 are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures
6 shown by the evidence in the case, you should disregard these charts and summaries and determine the
7 facts from the underlying evidence.

JURY INSTRUCTION NO. 12

ALL AVAILABLE EVIDENCE NEED NOT BE PRODUCED

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in this case.

1 **JURY INSTRUCTION NO. 13**

2 **BURDEN OF PROOF ON PLAINTIFF'S CLAIMS**

3 Plaintiff has the burden of proof on all essential elements of her claims by the preponderance of
4 the evidence. Where Plaintiff has met this burden, the burden then shifts to Defendant to prove any
5 defenses by the preponderance of the evidence.

6 “Preponderance of the evidence” means evidence that has more convincing force than that
7 opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on
8 either side of the issue preponderates, your finding on that issue must be against the party who had the
9 burden of proving it.

10 Plaintiff asserts the following five claims, which include two federal civil rights claims and three
11 state law claims:

- 12 1. Excessive force in violation of her husband’s Fourth Amendment rights, under 42
13 U.S.C. § 1983 (federal law -- civil rights);
- 14 2. Excessive force in violation of her own Fourteenth Amendment right not to be deprived
15 of a familial relationship without due process of law; under 42 U.S.C. § 1983 (federal
16 law -- civil rights);
- 17 3. Wrongful death based on negligence (state law);
- 18 4. Negligence (state law);
- 19 5. Wrongful death based on battery (state law);

20 Plaintiff asserts her civil rights claims (claims one and two, above) against Officer Haggett.

21 Plaintiff asserts her three state law claims against Officer Haggett.

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JURY INSTRUCTION NO. 16

STATE OF MIND – INTENTIONAL (42 U.S.C. § 1983)

The first element plaintiff must prove for each of her civil rights claims is that the act or omission of the defendant was intentional. An act is intentional if it is done knowingly, that is if it is done voluntarily and deliberately and not because of mistake, accident, negligence or other innocent reason. In determining whether the defendant acted with the requisite knowledge, you should remember that while witnesses may see and hear and so be able to give direct evidence of what a person does or fails to do, there is no way of looking into a person's mind. Therefore, you have to depend upon what was done and what the people involved said was in their minds and your belief or disbelief with respect to those facts.

JURY INSTRUCTION NO. 17

UNDER COLOR OF LAW DEFINED (42 U.S.C. § 1983)

The second element that plaintiff must prove for each of her civil rights claims is that the defendant was acting under color of law. Acts are done under color of law when a person acts or purports to act in the performance of official duties under any state, county or municipal law, ordinance, or regulation. The parties have stipulated that the defendants were acting under color of law.

JURY INSTRUCTION NO. 18

PROXIMATE CAUSE – GENERALLY (42 U.S.C. § 1983)

The third element which plaintiff must prove for each of her civil rights claims is that the defendant's acts were a proximate cause of the injuries sustained by the plaintiff. Proximate cause means that there must be a sufficient causal connection between the act or omission of a defendant and any injury or damage sustained by the plaintiff. An act or omission is a proximate cause if it was a substantial factor in bringing about or actually causing injury, that is, if the injury or damage was a reasonably foreseeable consequence of the defendant's act or omission. If an injury was a direct result of a reasonably probable consequence of a defendant's act or omission, it was proximately caused by such act or omission. In other words, if a defendant's act or omission had such an effect in producing the injury that reasonable persons would regard it as being a cause of the injury, then the act or omission is a proximate cause.

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JURY INSTRUCTION NO. 20

BURDEN OF PROOF ON REASONABLENESS OF FORCE USED

As to the claim for excessive force, plaintiff has the burden to establish that the force used against Mr. Sheehan was unreasonable.

JURY INSTRUCTION NO. 21

REASONABLENESS OF OFFICER'S CONDUCT

The test of reasonableness of force used by a police officer is not capable of precise definition or mechanical application. In determining whether an officer's use of force was reasonable, you must evaluate that conduct on the basis of facts and circumstances existing at the time and not on hindsight or on what has subsequently been learned. In making this determination, you should consider (1) the severity of the crime for which the decedent was being arrested; (2) whether the decedent posed an immediate threat to the safety of the officers or others; and (3) whether the decedent was actively resisting arrest or attempting to evade arrest by flight. The reasonableness of the force used must be judged from the perspective of a reasonable officer at the scene. You do not have to determine whether Sargent Haggett had less intrusive alternatives available, because he need only to have acted within that range of conduct identified as reasonable.

JURY INSTRUCTION NO. 22

USE OF DEADLY FORCE

An officer may use deadly force under two circumstances: (1) when he or she reasonably perceives that the suspect poses a threat of death or serious physical harm to that officer or others; and (2) when a suspect has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force is necessary to prevent escape and, where feasible, some warning has been given.

JURY INSTRUCTION NO. 23

POLICE OFFICER HAS NO DUTY TO RETREAT

A police officer is not obligated to retreat in the face of another's threatened use of force.

JURY INSTRUCTION NO. 24

PROBABLE CAUSE FOR SEIZURE OF MR. SHEEHAN

Plaintiff's husband, Mr. Sheehan, was being stopped for violating Sections 22350 and 20002 of the California Penal Code. Section 20002 of the California Penal Code prohibits "hit and run" accidents, while 22350 prohibits speeding.

JURY INSTRUCTION NO. 25

QUALIFIED IMMUNITY

If you find that the use of force on Mr. Sheehan was justified, you must find that, as a matter of law, he did not violate Mr. Sheehan's constitutional right not to be subjected to excessive force.

JURY INSTRUCTION NO. 26

SARGENT HAGGETT DID NOT KNOW WHETHER MR. SHEEHAN

HAD OR DID NOT HAVE A GUN IN THE VAN

You are instructed that at the time Sgt. Haggett shot Mr. Sheehan, Sgt. Haggett did not know whether Mr. Sheehan had or did not have a weapon inside the van. This fact may be taken into account when considering whether or not Sgt. Haggett acted reasonably.

JURY INSTRUCTION NO. 27

PLAINTIFF'S SECOND CLAIM : VIOLATION OF MRS. SHEEHAN'S 14TH

AMENDMENT RIGHT TO DUE PROCESS

BASED ON LOSS OF FAMILIAL RELATIONSHIP

Plaintiff's second civil rights claim is a Fourteenth Amendment claim based on the deprivation of her Fourteenth Amendment liberty interest arising out of the familial relationship with her husband. To prevail on this claim, she must prove by a preponderance of the evidence that Sargent Haggett acted with deliberate indifference to her rights of familial relationship and society by using excessive force against her husband, Edwin Sheehan.

JURY INSTRUCTION NO. 28

DELIBERATE INDIFFERENCE DEFINED (42 U.S.C. § 1983)

"Deliberate indifference" to the rights of others is the conscious or reckless disregard of the consequences of one's acts or omissions.

JURY INSTRUCTION NO. 29

BURDEN OF PROOF AND PREPONDERANCE OF THE EVIDENCE:

STATE LAW CLAIMS

For all of her state law claims, like her federal civil rights claims, Plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish the essential elements of each of her state law claims. The essential elements of each separate claim are set forth elsewhere in these instructions.

JURY INSTRUCTION NO. 30

PLAINTIFF'S THIRD CLAIM: WRONGFUL DEATH

BASED ON NEGLIGENCE

Plaintiff's third claim is for wrongful death based on negligence. Under California law, a person may recover damages for the death of a spouse caused by the neglect of another. The parties have stipulated that Mrs. Sheehan is the surviving spouse of Mr. Sheehan. The essential elements of the claim are:

1. The defendant acted negligently.
2. Defendant's negligence was a cause of injury, damage, loss or harm to Mr. Sheehan.

JURY INSTRUCTION NO. 31

PLAINTIFF'S FOURTH CLAIM: NEGLIGENCE

Plaintiff's fourth claim is a negligence claim asserted on her own behalf. The essential elements of that claim are:

1. The defendant acted negligently.
2. Defendant's negligence was a cause of injury, damage, loss or harm to Mrs. Sheehan.

1 **JURY INSTRUCTION NO. 32**

2 **DEFINITION OF NEGLIGENCE**

3 Negligence is the doing of something which a reasonably prudent person would not do,
4 or the failure to do something which a reasonably prudent person would do, under circumstances
5 similar to those shown by the evidence.

6 It is the failure to use ordinary or reasonable care.

7 Ordinary or reasonable care is that care which persons of ordinary prudence would use in
8 order to avoid injury to themselves or others under circumstances similar to those shown by the
9 evidence.

10 You will note that the person whose conduct we set up as a standard is not the extraordinarily
11 cautious individual, nor the exceptionally skillful one, but a person of reasonable and ordinary prudence.

JURY INSTRUCTION NO. 33

A TEST FOR DETERMINING THE QUESTION OF NEGLIGENCE

One test that is helpful in determining whether a person was negligent is to ask and answer the question whether or not, if a person of ordinary prudence had been in the same situation and possessed of the same knowledge, he or she would have foreseen or anticipated that the person on whose behalf the negligence claim is asserted might have been injured by or as a result of his or her action or inaction. If the answer to that question is “yes” and the action or inaction reasonably could have been avoided, then not to avoid it would be negligence.

JURY INSTRUCTION NO. 34

AMOUNT OF CAUTION

The amount of caution required of a person in the exercise of ordinary care depends upon the conditions apparent to him or that should be apparent to a reasonably prudent person under circumstances similar to those shown by the evidence.

JURY INSTRUCTION 35

RIGHT TO ASSUME OTHERS' GOOD CONDUCT

Every person who is exercising ordinary care has a right to assume that every other person will perform his duty and obey the law, and in the absence of reasonable cause for thinking otherwise, it is not negligence for such a person to fail to anticipate an accident which can occur only as a result of a violation of law by another person.

JURY INSTRUCTION NO. 36

PROXIMATE CAUSE DEFINITION

The law defines cause in its own peculiar way. A cause of injury, damage, loss or harm is something that is a substantial factor in bringing about the injury, damage or loss, or harm.

JURY INSTRUCTION NO. 37

CONCURRING CAUSES

There may be more than one cause of an injury. When negligent or wrongful conduct of two or more persons contributes concurrently as a cause of an injury, the conduct of each is a cause of the injury regardless of the extent to which each contributes to the injury. A cause is concurrent if it was operative at the moment of injury and acted with another cause with the injury.

JURY INSTRUCTION NO. 38

CONTRIBUTORY NEGLIGENCE

Contributory negligence is negligence on the part of the person on whose behalf the negligence claim is being brought, which, combining with the negligence of a defendant, contributes as a legal cause in bringing about death. The negligence claims here are brought on behalf of Mr. Sheehan and Mrs. Sheehan.

Contributory negligence, if any, on the part of Mr. and/or Mrs. Sheehan does not bar a recovery by the plaintiff against the defendant for either Mrs. Sheehan's negligence claim or her wrongful death claim based on negligence, but the total amount of damages to which the plaintiff would otherwise be entitled shall be reduced in proportion to the amount of negligence attributable to the person on whose behalf the claim is brought.

JURY INSTRUCTION NO. 39

WHEN THIRD PARTY'S INTERVENING NEGLIGENCE IS NOT

A SUPERSEDING CAUSE

As to Mrs. Sheehan's fourth claim, which is her claim for negligence on her own behalf, if you find that Sargent Haggett was negligent and that such negligence was a substantial factor in bringing about an injury to the plaintiff but that the immediate cause of the injury was the negligent conduct of Mr. Sheehan, the defendant is not relieved of liability for such injury if:

1. At the time of such conduct, Sargent Haggett realized or reasonably should have realized that Mr. Sheehan might so act; or
2. A reasonable person knowing the situation existing at the time of the conduct of Mr. Sheehan would not have regarded it as highly extraordinary that Mr. Sheehan had so acted; or
3. The conduct of Mr. Sheehan was not extraordinarily negligent and was a normal consequence of the situation created by Sargent Haggett.

Extraordinarily means unforeseeable, unpredictable, and statistically extremely improbable.

If, on the other hand, you find that Sargent Haggett was negligent and that such negligence was a substantial factor in bringing about an injury to the plaintiff but that the immediate cause of the injury was the negligent conduct of Mr. Sheehan, the defendant is relieved of liability for such injury if:

1. At the time of such conduct, Sargent Haggett did not and could not have reasonably realized that Mr. Sheehan might so act; or
2. A reasonable person knowing the situation existing at the time of the conduct of Mr. Sheehan would have regarded it as highly extraordinary that Mr. Sheehan had so acted; or
3. The conduct of Mr. Sheehan was extraordinarily negligent and was not a normal consequence of the situation created by Sargent Haggett.

JURY INSTRUCTION NO. 40

1 **PLAINTIFF’S FIFTH CLAIM: WRONGFUL DEATH**

2 **BASED ON BATTERY**

3 Under Plaintiff’s fifth claim, plaintiff seeks to recover damages for wrongful death based on
4 battery against Mr. Sheehan.

5 The essential elements of a claim for battery are:

- 6 1. Defendant intentionally did an act which resulted in harmful or offensive contact with
7 Mr. Sheehan’s person;
8 2. Mr. Sheehan did not consent to the contact;
9 3. The harmful or offensive contact caused injury, damage, loss or harm to Mr. Sheehan.
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JURY INSTRUCTION NO. 41

USE OF FORCE BY POLICE OFFICER IN ARREST OR DETENTION:

EXCESSIVE FORCE AS BATTERY

A police officer who is making an arrest may use reasonable force to make such arrest, to prevent escape, or to overcome resistance. The use of reasonable force to carry out an arrest does not constitute battery.

The officer need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested.

Where a police officer is making an arrest and the person being arrested has knowledge, or by the exercise of reasonable care should have knowledge, that he is being arrested by a police officer, it is the duty of the person to refrain from using force to resist such arrest unless unreasonable or excessive force is being used to make the arrest.

A police officer who uses unreasonable force in making an arrest commits a battery upon the person being arrested as to such excessive force. The person being arrested may use reasonable force in self-defense against such excessive force.

JURY INSTRUCTION NO. 42

SELF-DEFENSE

A person may use reasonable force to defend himself against harmful or offensive contact which he honestly and reasonably believes that another is about to inflict upon him.

However, the person who acts in self-defense may only use such force as reasonably appears necessary under existing circumstances.

If you find that the shooting in this case was in self-defense, then there can be no claim of battery.

JURY INSTRUCTION NO. 43

IMMUNITY FOR EXECUTION OR ENFORCEMENT OF ANY LAWS

As to all state law claims, you are instructed that you must find for Sgt. Haggett if you conclude that in his encounter with Edwin Sheehan he was engaged in the execution or enforcement of any law, and he did so with due care.

JURY INSTRUCTION NO. 44

DUTY TO DELIBERATE

When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully and with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

JURY INSTRUCTION NO. 45

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the courtroom deputy, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court.

JURY INSTRUCTION 46

RETURN OF VERDICT

After you have reached unanimous agreement on a verdict, your foreperson will fill in, date, and sign the verdict form and advise the court that you have reached a verdict.

DATED: April ____, 1999

JOSEPH C. SPERO
UNITED STATES MAGISTRATE JUDGE